## **Introduced by Senator Morrow**

February 20, 2003

An act to add Section 854.5 to the Public Utilities Code, relating to public utilities.

## LEGISLATIVE COUNSEL'S DIGEST

SB 429, as amended, Morrow. Public utilities: acquisition or control of electrical corporations and gas corporations.

(1) The California Constitution establishes the Public Utilities Commission, with jurisdiction over all public utilities. The Constitution grants the commission certain general powers over all public utilities, subject to control by the Legislature, and authorizes the Legislature, unlimited by the other provisions of the Constitution, to confer additional authority and jurisdiction upon the commission, that is cognate and germane to the regulation of public utilities.

The existing Public Utilities Act, prohibits any person or corporation from acquiring or controlling, directly or indirectly, any public utility organized and doing business in this state, including electrical eorporations and gas corporations, without first securing authorization to do so from the commission. Existing law requires the commission, before authorizing the acquisition or control of an electric, gas, or telephone utility having revenues in excess of a specified amount, to consider, among other things, that the proposal provides short-term and long-term economic benefits to ratepayers, and equitably allocates the short-term and long-term forecasted economic benefits of the proposed merger, acquisition, or control, as determined by the commission, between shareholders and ratepayers, where the commission has

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ratemaking authority. The act prohibits a public utility from issuing stocks and stock certificates, or other evidence of interest or ownership, or bonds, notes, or other evidences of indebtedness payable at periods of more than 12 months, without first securing authorization to do so from the commission.

Pursuant to the act, the commission has authorized the formation of holding companies holding a controlling interest in certain electrical corporations and gas corporations public utilities. The commission has conditioned authorization upon the capital requirements of the electrical corporation or gas corporation utility being given first priority by the board of directors of the parent holding company, as determined by the commission as being necessary to meet the obligation to serve the electrical corporation or gas corporation.

This bill would provide that any corporation or person holding a controlling interest in an electrical corporation or gas corporation organized and doing business under the laws of this state, is subject to the continuing jurisdiction and power of the commission to enforce a condition placed upon any authorization obtained to acquire or control, directly or indirectly, the public utility. The bill would require that it be a condition of any authorization given a corporation or person holding a controlling interest in an electrical corporation or gas corporation, that the capital requirements of the utility, as determined by the commission to be necessary to meet the utility's obligations to serve, be given first priority. The bill would further require, when the commission determines it necessary to meet the obligation of the utility to serve, that the commission order the corporation or person holding a controlling interest in the utility, to infuse sufficient capital into the utility subsidiary, of any type deemed necessary by the commission, to enable the utility to fulfill the obligation to serve. authorize the commission to enforce any condition agreed to by a public utility as part of an application to merge, acquire, or control a public utility or an application to issue stocks and stock certificates, or other evidence of interest or ownership, or bonds, notes, or other evidence of indebtedness. The power to enforce would apply to the utility and the corporation or person holding a controlling interest in the utility. The bill would require that whenever the commission authorizes a corporation or person to hold a controlling interest in an electrical or gas corporation, that it be a condition that the capital requirements of the utility necessary to meet the utility's obligation to serve be given first priority. The bill would declare that these provisions state existing law.

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The bill would require the commission to order the corporation or person holding a controlling interest to infuse sufficient capital into the utility to enable it to fulfill its obligation to serve. The bill would require that whenever the commission authorizes a corporation or person to hold a controlling interest in an electrical or gas corporation, that a balanced capital structure be maintained in the utility and that retained earnings not be transferred to the controlling corporation or person where doing so would decrease the utility's net equity below that adopted by the commission in the utility's last general rate proceeding. The bill would require that whenever the commission authorizes a corporation or person to hold a controlling interest in an electrical or gas corporation, that any dividend policy of the utility be set by the utility's board of directors as though the utility is a stand-alone electrical or gas corporation. Because a violation of the Public Utilities Act or an order of the commission is a crime under existing law, the bill would impose a state-mandated local program by creating a new crime.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 854.5 is added to the Public Utilities 2 Code, to read:
- 3 854.5. (a) Any corporation or person holding a controlling
- 4 854.5. (a) The commission may enforce any condition agreed to by a public utility as part of an application to merge, acquire, or control either directly or indirectly any public utility organized
- 7 and doing business in this state, pursuant to Section 854.

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(b) The commission may enforce any condition agreed to by a public utility as part of an application to issue stocks and stock certificates, or other evidence of interest or ownership, or bonds,

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(c) The commission's power to enforce under this section applies to the public utility and any corporation or person holding a controlling interest in the public utility.

- (d) Whenever the commission authorizes a corporation or person to hold a controlling interest in an electrical corporation or gas corporation, a condition of that authorization is that the capital requirements of the electrical corporation or gas corporation, as determined by the commission to be necessary to meet the public utility's obligation to serve, shall be given first priority.
- (e) The commission shall order a corporation or person holding a controlling interest in an electrical corporation or gas corporation to infuse sufficient capital into the public utility, of any type and quantity deemed necessary by the commission, to enable the public utility to fulfill its obligation to serve.
- (f) Whenever the commission authorizes a corporation or person to hold a controlling interest in an electrical corporation or gas corporation, a condition of that authorization is that the corporation or person maintain a balanced capital structure in the public utility, as determined to be reasonable by the commission in the public utility's most recent general rate case. No electrical corporation or gas corporation shall permit retained earnings to be transferred to a corporation or person holding a controlling interest in the public utility where doing so would decrease the public utility's net equity ratio below that adopted in the public utility's last general rate proceeding.
- (g) Whenever the commission authorizes a corporation or person to hold a controlling interest in an electrical corporation or gas corporation, a condition of that authorization is that the dividend policy of the public utility shall continue to be set by the public utility's board of directors, as though the public utility were a comparable stand-alone electrical corporation or gas corporation.
- SEC. 2. The addition of subdivisions (a), (b), (c) and (d) to Section 854.5 of the Public Utilities Code by Section 1 of this act do not constitute a change in, but are declaratory of, existing law. interest in an electrical corporation or gas corporation organized and doing business under the laws of this state, is subject to the continuing jurisdiction and power of the commission to enforce a

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condition placed upon any authorization obtained pursuant to Section 854.

(b) It is a condition of any authorization given to a corporation or person holding a controlling interest in an electrical corporation or gas corporation organized and doing business under the laws of this state, that the capital requirements of the electrical corporation or gas corporation, as determined by the commission to be necessary to meet the corporation's obligations to serve, shall be given first priority. When determined by the commission to be necessary to meet the obligation of an electrical corporation or gas corporation to serve, the commission shall order a corporation or person holding a controlling interest in the electrical corporation or gas corporation, to infuse sufficient capital into their respective utility subsidiaries, of any type deemed necessary by the commission to enable the electrical corporation or gas corporation to fulfill the obligation to serve.